

Notice of Allowability

Application No.

09/878,781

Examiner

S. Devi, Ph.D.

Applicant(s)

BOLTON ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicants' telephonic authorization of 08/19/04.
2. ☒ The allowed claim(s) ~~is/are~~ 2, 51, 62, 63 and 76, now renumbered as claims 1, 2, 3, 4 and 5 respectively.
3. ☒ The drawings filed on 10 September 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input checked="" type="checkbox"/> Other <u>See Attachment.</u> |

ATTACHMENT TO NOTICE OF ALLOWABILITY

Examiner's Amendment

1) An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicants, an amendment may be filed as provided by 37 C.F.R. 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. The authorization for this Examiner's amendment was provided by Ms. Roberta Robins in a telephone interview on 19 August 2004. This application has been amended as indicated below:

- (a) Claims 64-66 and 73 have been canceled.
- (b) In line 2 of claim 51, the recitation 'a' is replaced with the recitation --the--.
- (c) In line 3 of claim 63, the recitation 'a' is replaced with --the--.
- (d) In line 5 of claim 63, the recitation 'said protein' is replaced with the recitation --said GapC protein--.
- (e) In line 1 of claim 76, the recitation '*Streptococcus*' is replaced with the limitation --*Streptococcus dysagalactiae*--.
- (f) In line 2 of claim 76, the recitation 'a' is replaced with the limitation --the--.
- (g) In lines 9, 28 and 29 of page 47 of the specification, the recitations '(ATCC No:)' have been deleted.
- (h) In lines 13-15 of page 50 of the specification, the recitations '(ATCC No:)' have been deleted.
- (i) In line 6 of page 23 of the specification, the recitation 'http:/' has been deleted.

Status of Claims

- 2) Claims 64-66 and 73 have been canceled via this Examiner's amendment.
Claims 51, 63 and 76 have been amended via this Examiner's amendment.
Claim 63, previously withdrawn as being drawn to a non-elected method claim, is now rejoined with the elected product claims and is fully examined. The restriction requirement made between the product of invention 1 and the process of making of invention 31 is hereby withdrawn. See paragraph 5 below.

Claims 2, 51, 62, 63 and 76 are pending and are under examination.

Rejection(s) Withdrawn

- 3) The provisional rejection of claims 2, 51, 62 and 76 made in paragraph 7(A) of the Office Action mailed 01/07/04 under 35 U.S.C § 101 as claiming the same invention as that of claims 1, 2, 31, 32, 42 and 56 of the co-pending application 10/134,297, is withdrawn in light of Applicants' cancellation of, or Applicants' amendment to the identified claims of the co-pending application.
- 4) The rejection of claims 2, 51, 62 and 76 made in paragraph 26 of the Office Action mailed 01/07/04 under 35 U.S.C § 112, second paragraph as being indefinite, is withdrawn in light of the amendments made to the claims and/or the base claim via this Examiner's amendment.

Remarks

- 5) Claims 2, 51, 62, 63 and 76, as amended now, define over the prior art of record and are allowed. Pursuant to the procedures set forth in the *Official Gazette Notice* dated March 26, 1996 (1184 O.G. 86), claim 63, directed to a process of making the vaccine composition, previously withdrawn from consideration as a result of a restriction requirement, is now subject to being rejoined. Claim 63 is hereby rejoined and fully examined for patentability under 37 C.F.R 1.104. The restriction requirement made between the product of invention 1 and the process of making of invention 31 is hereby withdrawn. Claims 2, 51, 62, 63 and 76 are now renumbered as claims 1, 2, 3, 4 and 5 respectively.
- 6) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center, which receives transmissions 24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform with the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The RightFax number for submission of before-final amendments is (703) 872-9306. The RightFax number for submission of after-final amendments is (703) 872-9307.
- 7) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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8) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

August, 2004


S. DEVI, PH.D.
PRIMARY EXAMINER